

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| WILLIAM E. DUGAN, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | CIVIL ACTION NO. 08 C 1011 |
| vs. |) | |
| |) | JUDGE ROBERT W. GETTLEMAN |
| MAHONEY & ASSOCIATES, LLC, |) | |
| |) | MAGISTRATE MARTIN C. ASHMAN |
| Defendant. |) | |

MOTION FOR SERVICE BY SPECIAL ORDER OF COURT

NOW COME, Plaintiffs, William E. Dugan, *et al.*, (“Plaintiffs” or “Funds”), by their attorneys, and request entry of a Special Order allowing service of Summons and Complaint upon Mahoney & Associates, LLC, pursuant to Federal Rule of Civil Procedure 4(e)(1), by serving the Summons and Complaint upon Defendant’s Registered Agent’s residential address through certified mail, return receipt requested or by affixing the Summons and Complaint at the Defendant’s Registered Agent’s residential address. Plaintiffs further request an additional thirty (30) days from the 120th day after filing the Complaint in which to effect service. In support of their Motion, Plaintiffs state as follows:

1. On February 19, 2008, Plaintiffs filed an action arising under the laws of the United States and pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1132, 1145 (hereinafter referred to as “ERISA”).
2. On the same day, the Plaintiffs sent the Summons and Complaint to VTS Investigations, LLC (hereinafter referred to as “VTS”) to serve on Clinton Mahoney, Registered Agent/Manager, at his business or home address as follows: 237 E. Ontario, Chicago, IL 60611 or 11405 Burr Oak Lane, Burr Ridge, IL 60527 (A copy of the February 19, 2008 correspondence to VTS is attached hereto as Exhibit A).

3. On March 14, 2008, a representative of VTS e-mailed Plaintiffs' counsel's office and advised that Clinton Mahoney's mother represented to the process server that Mr. Mahoney does not live at the residential address of 11405 Burr Oak Lane, Burr Ridge, IL 60527. The VTS representative further stated that Clinton Mahoney's father was found at the work address of 237 E. Ontario, Chicago, IL 60611. The VTS representative stated that Mr. Mahoney's father represented that he was not authorized to accept service on his son's behalf and was very uncooperative (A copy of the March 14, 2008 e-mail is attached hereto as Exhibit B).

4. In response to the e-mail from VTS, Plaintiffs' counsel's paralegal noted another business address for Defendant in Plaintiffs' file and requested that VTS attempt service of the Summons and Complaint at 12736 S. Ridgeway Avenue, Alsip, IL 60803-1533, (708) 293-0110 (See, Exhibit B).

5. On March 26, 2008, a representative of VTS e-mailed Plaintiffs' counsel's office and advised that the Defendant has moved from the Alsip business address and there was a sign on the door saying that all deliveries for Defendant are to be left downstairs. The process server talked to a representative of the company downstairs who represented that Defendant is no longer at the Alsip location but the company downstairs was asked to accept packages for Defendant. The representatives at the company downstairs from Defendant's former business location, advised the process server that they do not know where Mr. Mahoney is now located (A copy of the March 26, 2008 e-mail is attached hereto as Exhibit C).

6. In response to the March 26, 2008 e-mail, Plaintiffs' counsel's office conducted a LEXIS/NEXIS search and found another possible residential address for Clinton Mahoney at 10809 Chaucer Drive, Willow Springs, IL 60480-1148. Plaintiffs' counsel's office requested that VTS attempt to serve Clinton Mahoney at this residential address (See, Exhibit C).

7. On April 22, 2008, a representative of VTS e-mailed Plaintiffs' counsel's office and advised that the residents of 10809 Chaucer Drive, Willow Springs, IL 60480-1148 refused to answer their door. The process server asked whether Plaintiffs would like to set up surveillance of the residence to serve Mr. Mahoney (A copy of the April 22, 2008 e-mail is attached hereto as Exhibit D).

8. On April 24, 2008, the Plaintiffs decided to attempt service with a Fund Representative to avoid the cost of surveillance.

9. Accordingly, VTS returned the Summons and Complaint and submitted Affidavits of Service. The process servers verified that they attempted to serve Mr. Mahoney on nine (9) occasions on the following dates and times:

| DATE | TIME |
|----------------|-------------|
| March 5, 2008 | 1:25 p.m. |
| March 8, 2008 | 8:00 a.m. |
| March 12, 2008 | 4:30 p.m. |
| March 24, 2008 | 8:25 p.m. |
| March 25, 2008 | 2:20 p.m. |
| March 31, 2008 | 9:10 a.m. |
| April 5, 2008 | 1:10 p.m. |
| April 6, 2008 | 10:30 a.m. |
| April 14, 2008 | 7:45 a.m. |

The process servers included the following additional information in the Affidavits of Service: "Defendant does not reside at 11405 Burr Oak Drive, Burr Ridge, IL. This is his mother['s] house, refused information. Defendant no longer located at 12736 S. Ridgeway Ave., Alsip, IL. Defendant avoiding service at 10809 Chaucer Drive, Willow Springs," and "Unable to make personal contact at 237 E. Ontario, Chicago, IL. Spoke with defendant's father who refused to accept service. The

company at this location is ‘The Film Tape Works Studio.’” (A copy of both Affidavits of Service are attached hereto as Exhibit E).

10. On May 2, 2008, Plaintiffs’ counsel submitted the Summons and Complaint to the Fund Office to give to the Fund representative to serve Mr. Mahoney at his residential address at 10809 Chaucer Drive, Willow Springs, Illinois 60480-1148 (A copy of the May 2, 2008 correspondence enclosing the Summons and Complaint is attached hereto as Exhibit F).

11. On May 21, 2008, the Fund Office confirmed that the Fund representative was not successful in serving the Summons and Complaint on Mr. Mahoney at his residential address in Willow Springs, his business address at 12736 S. Ridgeway Ave., Alsip, Illinois 60803-1533, or the residential address at 11405 Burr Oak Lane, Burr Ridge, Illinois 60527.

12. The Plaintiffs have good cause for their failure to serve the Summons and Complaint upon Clinton Mahoney. Specifically, Plaintiffs believe that Clinton Mahoney is evading service.

WHEREFORE, for all of the above reasons, the Funds respectfully request that this Court enter a Special Order allowing service of process upon Registered Agent/Manager, Clinton Mahoney, by certified mail, return receipt requested or in the alternative, by affixing the Summons and Complaint at the residential address of 10809 Chaucer Drive, Willow Springs, Illinois 60480-1148, the residential address of 11405 Burr Oak Lane, Burr Ridge, Illinois 60527, and the business address of 12736 S. Ridgeway Ave., Alsip, Illinois 60803-1533. The Funds further request an additional thirty (30) days from the 120th day after filing the Complaint in which to effect service.

Respectfully submitted,

/s/ Catherine M. Chapman

One of the Attorneys for Plaintiffs

Name and Address of Attorney for Plaintiffs:

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that she electronically filed the foregoing document, **Motion for Service by Special Order of Court**, with the Clerk of Court using the CM/ECF system, and further certifies that I have mailed the above-referenced document by United States Mail to the following non-CM/ECF participants on or before the hour of 5:00 p.m. this 18th day of June 2008:

Mr. Clinton Mahoney
10809 Chaucer Drive
Willow Springs, IL 60480-1148

/s/ Catherine M. Chapman

Catherine M. Chapman
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